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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

In re P.K. et al., Persons Coming Under the Juvenile Court Law.	
RIVERSIDE COUNTY DEPARTMENT OF PUBLIC SOCIAL SERVICES, Plaintiff and Respondent, v. N.K., Defendant and Appellant.	E071355 (Super.Ct.No. SWJ1700319) OPINION

APPEAL from the Superior Court of Riverside County. Judith C. Clark, Judge. Affirmed.

Jacques Alexander Love, under appointment by the Court of Appeal, for Defendant and Appellant.

Gregory P. Priamos, County Counsel, James E. Brown, Guy B. Pittman, and Prabhath D. Shettigar, Deputy County Counsel, for Plaintiff and Respondent.

I

INTRODUCTION

N.K. (Mother) has a history of abusing controlled substances and a history with child protective services that led the Riverside County Department of Public Social Services (DPSS) to remove her daughters from her care and custody. After Mother was unable to reunify with her daughters, the juvenile court terminated parental rights and found it likely the children would be adopted. On appeal, Mother argues (1) the juvenile court failed to timely assess and consider the maternal grandparents for placement under Welfare and Institutions Code[1] section 361.3; and (2) there was insufficient evidence the children were likely to be adopted within a reasonable time. We reject these contentions and affirm the judgment.

II

FACTUAL AND PROCEDURAL BACKGROUND

The family came to the attention of DPSS on May 19, 2017, after it was reported that then 13-year-old P.K. was asking for food because she had not eaten in several days. P.K. also stated that Mother was assaulted by her boyfriend. The children had witnessed Mother being physically assaulted by her boyfriend on several occasions. It was further reported that the family home was uninhabitable due to an electrical fire and it had lacked running water for the past six months. There were also times when Mother would have

[1] All future statutory references are to the Welfare and Institutions Code unless otherwise stated.

P.K. stay home from school to babysit then one-year-old N.K. It was reported that Mother and her boyfriend abused methamphetamines and sold methamphetamines from the home. Mother also sold her food in exchange for cash to purchase drugs and allowed transients to stay in the home. A search of the family's prior child welfare history revealed eight previous referral investigations regarding mother.

On May 19, 2017, the social worker interviewed P.K. at her middle school. P.K. did not know who her biological father was but considered A.S. to be her father.[2] A.S. was the biological father to Mother's other child, C.S., who resided with A.S. P.K. corroborated the allegations in the referral, and added that she had been showering at hotels when they received vouchers for rooms and that Mother smoked marijuana in front of the children. P.K. also noted that she had found a methamphetamine pipe in Mother's belongings and that she had witnessed Mother's boyfriend physically assault Mother on multiple instances. P.K. further stated that she would rather be in the foster care system than go home, but worried about being separated from her sister as she wanted to take care of her. C.S. corroborated the allegations in the referral, and added that A.S. generally brought food to P.K. and N.K. when they were hungry or had not eaten in days.

The social worker also interviewed Mother on May 19, 2017. Mother denied the allegations in the referral and initially refused to allow the social worker to conduct a home evaluation. Mother claimed that she did not have a drug problem or use

[2] Mother reported that the father of P.K. was T.B., but was unable to provide any other identifying information for him as he had reportedly left Mother when she was two months' pregnant. Mother did not know the identity of N.K.'s father.

methamphetamine. However, Mother appeared to be under the influence and refused to submit to an on-demand drug test. Mother acknowledged that she had been a victim of domestic violence and stated the children had witnessed it on two occasions. The home evaluation revealed the home was in an unsafe, filthy, and uninhabitable condition, with a strong urine odor, no running water, and large quantity of dog feces in a back room. During the evaluation, a man emerged from a back bedroom, and the deputy accompanying the social worker recognized him as a probationer with an extensive criminal history. P.K. stated she did not feel safe in the home. Due to exigent circumstances, P.K. and N.K. were taken into protective custody. The social worker asked Mother if she had relatives to consider for the children's placement. Mother provided the name and phone number of the maternal grandmother.

On May 22, 2017, the social worker spoke with the maternal grandmother and provided her with an assessment application for placement of the children in her care. The maternal grandmother provided all necessary information, but noted that she resided in Fresno, California, and would not be able to transport the children for visits. She also stated that while she would like to be assessed by DPSS, both she and her husband had a criminal history that may or may not allow them to be approved.

On May 23, 2017, a petition was filed on behalf of P.K. and N.K. pursuant to section 300, subdivisions (b) (failure to protect) and (g) (no provision for support). A first amended petition was filed on June 15, 2017, to add information relating to N.K.'s alleged fathers.

The detention hearing was held on May 24, 2017. The juvenile court formally detained the children from parental custody. The court provided Mother with visitation two times per week, and found the fathers to be alleged.

P.K. and N.K. were initially placed in separate foster homes. However, on May 30, 2017, N.K. was placed in the same foster home as her sister, P.K. As of June 2017, the maternal grandmother had not returned the placement application to be assessed for placement. Mother reported that she was raised in a one parent household by the maternal grandmother who was addicted to methamphetamine. Mother also noted that the maternal grandmother went to prison when she was 15 years old and that she was left to raise herself. Mother further stated that the maternal grandmother stopped using methamphetamine and was an ordained minister. P.K. reported that she would ultimately want to live with her mother if Mother changed her life and became stable.

The jurisdictional/dispositional hearing was held on June 15, 2017. At that time, the juvenile court found true the allegations in the first amended petition and declared the children dependents of the court. The court provided Mother with reunifications services and ordered Mother to participate in her case plan. The court denied the fathers reunification services pursuant to section 361.5, subdivision (b)(1).

By the six-month review hearing, DPSS recommended that Mother's reunification services be terminated and a section 366.26 hearing be set. Mother continued to abuse drugs as evidenced by her multiple positive drug tests. She also continued to be involved in an abusive relationship. Mother was observed to have a black eye on September 1,

2017. In addition, Mother failed to complete her case plan and did not consistently visit her children.

In November 2017, P.K. was diagnosed with anxiety, dysthymia, post-traumatic stress disorder (PTSD) and a purging disorder. Her doctor prescribed Prozac to treat her conditions. P.K. met all age-appropriate developmental milestones and was doing well in school. However, she presented as depressed and upset most of the time, and was seeing a therapist once a week. She reported being upset with everyone, including the social worker, her mother, and "'everything.'" P.K. did not like her placement because the family was "too 'warm' and 'affectionate' and that she [was] not used to this type of familial interaction." P.K. wanted to move to a different placement in which the caregiver did not have their own biological children. P.K. expressed suicidal ideations in September 2017, after her caregiver confiscated her cell phone for having unauthorized contact with her mother. P.K. was described as being verbally and physically abusive toward N.K. N.K. was developmentally on target and was described as a friendly, happy child who got along well with everyone.

At a hearing on December 18, 2017, Mother requested that the six-month hearing be set contested. The maternal grandmother was present at that hearing. Mother's counsel informed the court that the maternal grandmother was still being assessed for placement of the children, and that maternal grandmother wanted to have visits with the children. The court authorized visits between the children and the maternal grandmother, and continued the six-month review hearing.

On January 18, 2018, DPSS reported that the maternal grandmother was unable to visit with the children during the holidays due to the maternal grandmother's distance and she had not completed a DPSS background check. DPSS also noted that the maternal grandmother was "currently undergoing the Resource Family Approval Process so that she [could] be considered for placement of the children."

At the January 18, 2018 contested six-month review hearing, Mother requested that her services not be terminated and that the maternal grandmother continue to be assessed for the children's placement. Minor's counsel informed the court that P.K. was unhappy in her current foster home and that P.K. desired to be moved to a new placement even if she was separated from N.K. Following further argument, the juvenile court terminated Mother's reunification services and set a section 366.26 hearing. The court ordered DPSS to locate a placement for P.K. that would not result in her having to change schools, and ordered sibling visits with N.K. twice a month if P.K. was separated from N.K. The court also stated, "And hopefully [DPSS] will continue to assess the grandmother for possible placement." The juvenile court provided Mother with visits two times per month and advised Mother of her appellate writ rights.

On February 7, 2018, P.K. was placed in a different foster home than N.K. P.K. no longer took prescription medication and was thriving in her new placement. While in her new placement, P.K. was happy, remained developmentally on target, and had earned all A's in school. P.K.'s caregivers reported that they had bonded with her. P.K.'s caregivers also wanted N.K. placed in their home because they desired to adopt both

girls. N.K. remained developmentally on track and showed no signs of mental or emotional trauma. N.K.'s current foster parents also desired to adopt her. DPSS was scheduling a meeting to discuss placing N.K. with P.K. so that the sisters could be together, and recommended the section 366.26 hearing be continued for further assessment of the permanent plan for the children.

On May 21, 2018, the juvenile court continued the section 366.26 hearing and ordered "DPSS to exercise their responsibilities regarding assessing maternal grandmother for possible placement." Mother's counsel stated that Mother believed the maternal grandmother had been approved for the children's placement, and requested that N.K. be placed with the maternal grandmother. Mother's counsel did not request P.K. also be placed with the maternal grandmother because she was "doing so well in her current placement." P.K.'s counsel requested that N.K. be placed with P.K. The juvenile court noted that the maternal grandmother was requesting placement and that the maternal grandmother was still going through the approval process. The court directed DPSS to exercise its responsibilities under the law in regards to the determination of placement with respect to N.K.

On June 20, 2018, N.K. was placed in the same foster home as P.K. N.K. quickly bonded with her caregivers who remained fully committed to adopting both girls. N.K. was affectionate with her new caregivers and her sister, P.K. P.K. stated that she was happy about being adopted. The children were thriving in their prospective adoptive home and had bonded to their prospective adoptive parents. Since the childrens'

placement, the prospective adoptive parents had ensured the children's educational, developmental, medical, and emotional needs were met, and desired to provide the children with a stable, permanent, and loving home. The prospective adoptive parents reported that both girls deserved stability, a peaceful home, and that they "truly" loved P.K. and N.K. as their own. The caregivers were committed to adopting both girls and wanted to finalize the adoption.

On September 11, 2018, the prospective adoptive parents reported that due to P.K.'s excellent school attendance and grades, P.K. had earned "a spot for a trip abroad and visit London, Paris and Normandy between June 17, 2019, through June 25, 2019." The prospective adoptive parents had discussed this privilege and great opportunity for P.K.'s educational career, and had agreed to pay any out-of-pocket expenses so P.K. could experience this opportunity.

On September 18, 2018, the section 366.26 hearing was held. The juvenile court accepted Mother's stipulated testimony about how much she loved her children and how she had provided a good life for them. Mother requested that the court apply the beneficial parent-child exception to termination of parental rights and order a legal guardianship instead. Mother did raise the issue of relative placement at the hearing or request that N.K. be placed with the maternal grandmother. P.K.'s counsel informed the court that 14-year-old P.K. wanted to be adopted by her current caregivers.

The juvenile court stated that it had no doubt Mother loved her children. However, the court noted that N.K. was almost three years old and had been out of

Mother's care for a substantial portion of her life. As a result, N.K. had not built a stable beneficial bond with Mother. The court further found that Mother's addiction to drugs had created significant negative effects on the relationship between Mother and her children. The court found that P.K. had expressed her wish to be adopted and that severing the parent-child relationship would not deprive the children from a substantially positive emotional attachment. The court concluded the children were likely to be adopted and terminated parental rights.

On September 19, 2018, Mother filed a timely notice of appeal challenging the juvenile court's September 18, 2018 findings and orders terminating Mother's parental rights.

III

DISCUSSION

A. *Failure to Assess and Consider the Maternal Grandparents for Placement*

Mother argues DPSS and the juvenile court failed to timely assess and consider the maternal grandparents for placement of the children under section 361.3. DPSS responds Mother did not file a timely notice of appeal of the juvenile court's order denying her request for relative placement, and therefore, this court has no jurisdiction to address the issue. DPSS also contends Mother has forfeited her section 361.3 argument because the issue was not raised at the September 18, 2018 section 366.26 hearing and that her notice of appeal is deficient. DPSS further asserts that even if Mother has not forfeited the relative placement issue, she lacks standing to appeal this issue. In the

alternative, DPSS argues the juvenile court did not abuse its discretion by not placing N.K. with the maternal grandparents.

1. Timely Notice of Appeal

Preliminarily, DPSS claims Mother did not file a timely notice of appeal of the juvenile court's May 21, 2018 order denying her request for relative placement, and therefore this court has no jurisdiction to reach this issue. We disagree.

Although Mother did not appeal from the juvenile court's May 21, 2018 order regarding relative placement, the juvenile court never made an order denying Mother's request for relative placement. The juvenile court's order was for DPSS to comply with their relative placement assessment obligation under section 361.3. That order was made after Mother's counsel informed the court of Mother's ongoing request for relative placement with the maternal grandmother and that it was Mother's understanding the maternal grandmother had been approved for placement. Specifically, the court stated, "Okay. So with regards to relative placement for the younger child, I'm not getting in the middle of that right now other than to say [DPSS], I believe, is well aware that there is—the maternal grandmother is requesting placement. I think we've been going through that approval process. So just direct [DPSS] to exercise its responsibilities under the code with regards to the determination of placement with regards to the child."

The record is clear that the juvenile court did not deny Mother's relative placement request at the May 21, 2018 hearing, but ordered DPSS to continue to assess the maternal grandmother for relative placement. Therefore, DPSS's claim that Mother

failed to file a timely notice of appeal of the court's May 21, 2018 order denying her request for relative placement is without merit.

2. Forfeiture

DPSS also argues Mother forfeited the issue of relative placement by failing to raise it at the section 366.26 hearing. We agree the issue was forfeited.

"In dependency litigation, '[a] party forfeits the right to claim error as grounds for reversal on appeal when he or she fails to raise the objection in the trial court. [Citations.]' [Citation.]" (*In re T.G.* (2013) 215 Cal.App.4th 1, 14.) Mother had appointed counsel from the detention hearing on. As noted above, at the May 21, 2018 hearing, Mother's counsel stated that Mother would like N.K. placed with the maternal grandmother and that it was Mother's understanding the maternal grandmother had been approved for placement. At that time, however, DPSS's assessment was ongoing. Mother's counsel never raised the particular claims that Mother is raising in this appeal—that DPSS and the juvenile court failed to carry out a timely assessment of the maternal grandparents' home for placement of the children—at the September 18, 2018 section 366.26 hearing. Indeed, Mother never raised any issues regarding relative placement at the September 18, 2018 hearing. Her failure to do so was a forfeiture. (*In re Dakota H.* (2005) 132 Cal.App.4th 212, 221-222 [failure to raise an issue forfeits it on appeal].)

3. Standing

DPSS further contends Mother lacks standing to raise the relative placement issue. In general, at least until parental rights are terminated, "parents have standing in dependency cases to raise issues regarding placement . . . . [Citations.]" (*In re A.S.* (2012) 205 Cal.App.4th 1332, 1339-1340.) This is because placement, particularly with a relative, can affect the parent's interests, including his or her chances of reunification. (*In re Esperanza C.* (2008) 165 Cal.App.4th 1042, 1053-1054; *Los Angeles County Dept. of Children & Family Services v. Superior Court* (2007) 158 Cal.App.4th 1562, 1568, fn. 2.)

Our Supreme Court has considered whether a father had standing to appeal a juvenile court's order declining to place a child with the child's grandparents. (*In re K.C.* (2011) 52 Cal.4th 231, 236).) In *K.C.*, the court reviewed appellate decisions and derived the following rule: "A parent's appeal from a judgment terminating parental rights confers standing to appeal an order concerning the dependent child's placement only if the placement order's reversal advances the parent's argument against terminating parental rights." (*Id*. at p. 238.)

Mother argues the children's placement in the maternal grandparents' home advances her arguments on appeal against termination of her parental rights because relative placement would affect her legal status, and placement of the children with the maternal grandparents had the potential to alter the permanent plan. Thus, Mother maintains that she has standing to raise the relative placement issue. Assuming, without

deciding, Mother has standing to raise the relative placement issue, we address the merits of her argument.

4. Merits

Mother contends DPSS and the juvenile court failed to timely assess and consider the maternal grandparents for placement under section 361.3. DPSS responds the juvenile court did not abuse its discretion by not placing N.K. with the maternal grandparents.

Section 361.3 provides that in any case where a child is removed from the physical custody of his or her parents, "preferential consideration shall be given to a request by a relative of the child for placement of the child with the relative . . . ." (§ 361.3, subd. (a).) "'Preferential consideration' means that the relative seeking placement shall be the first placement to be considered and investigated." (§ 361.3, subd. (c)(1).)

Cases interpreting section 361.3 have stressed that it does not create an evidentiary presumption. Instead, "'relatives [are to] be assessed and *considered* favorably, subject to the juvenile court's consideration of the suitability of the relative's home and the best interests of the child.' [Citations.]" (*In re Antonio G.* (2007) 159 Cal.App.4th 369, 377; see *In re Stephanie M.* (1994) 7 Cal.4th 295, 320 (*Stephanie M.*).) The preference applies "when a new placement becomes necessary after reunification services are terminated but before parental rights are terminated and adoptive placement becomes an issue." (*Cesar V. v. Superior Court* (2001) 91 Cal.App.4th 1023, 1032.) "There is no relative placement preference for adoption." (*In re Lauren R.* (2007) 148 Cal.App.4th 841, 855.)

Section 361.3 "assures interested relatives that, when a child is taken from her parents and placed outside the home pending the determination whether reunification is possible, the relative's application will be considered before a stranger's application." (*In re Sarah S.* (1996) 43 Cal.App.4th 274, 285 (*Sarah S.*).) However, "[t]he relative placement preference established by section 361.3 does not constitute 'a relative placement *guarantee*.' [Citation.]" (*In re K.L.* (2016) 248 Cal.App.4th 52, 66, fn. 4.) Nor does it supply a presumption that the children will be placed with the relative. (*Stephanie M., supra,* 7 Cal.4th at pp. 320-321.) Rather, when reunification services have failed or been denied, "and the juvenile court has before it a proposed permanent plan for adoption, the only relative with a preference is a '*relative caretaker*' (if there is one seeking to adopt) and the only preference is that defined by subdivision (k) of section 366.26 (that is, a preference to be first in line in the application process)." (*Sarah S.*, at pp. 285-286, italics added.) Section 366.26, subdivision (k), assures a relative who has already been caring for the children that his or her application for adoption will receive preference. (*Sarah S.*, at p. 285.) It does not give preferential consideration to relatives who have never been caretakers of the dependent children.

The court and DPSS must still determine whether placement with the relative is appropriate, taking into account a host of factors. (*Stephanie M., supra,* 7 Cal.4th at p. 321; see § 361.3, subd. (a).) These factors include: (1) the best interest of the children; (2) the wishes of the parents, relative, and children; (3) the placement of siblings in the same home; (4) the good moral character of the relative and other adults in

the relative's home; (5) the nature and duration of the relationship between the children and the relative; (6) the relative's desire and ability to provide legal permanency; (7) the relative's ability to provide a safe, secure, and stable environment; (8) the relative's ability to provide proper and effective care and control of the children; (9) the relative's ability to provide a home and the necessities of life; (10) the relative's ability to protect the children from their parents; (11) the relative's ability to facilitate court-ordered reunification; (12) the relative's ability to facilitate visitation with other relatives; (13) the relative's ability to facilitate implementation of the case plan; and (14) the relative's ability to arrange for appropriate and safe child care, if necessary. (§ 361.3, subd. (a).)

An agency study concluding the relative's home is suitable is not dispositive. (*Stephanie M.*, *supra*, 7 Cal.4th at p. 321.) The juvenile court must exercise its own judgment regarding a change in placement. (*Ibid*. [holding the juvenile court did not abuse its discretion in denying the relative's request for placement, despite a positive home study by a Mexican social services agency].)

"[R]egardless of the relative placement preference, the fundamental duty of the court is to assure the best interests of the child, whose bond with a foster parent may require that placement with a relative be rejected." (*Stephanie M.*, *supra*, 7 Cal.4th at p. 321.) "In any custody determination, a primary consideration in determining the child's best interests is the goal of assuring stability and continuity." (*Id*. at p. 317.)

We review the juvenile court's determination regarding relative placement for abuse of discretion. (*In re Robert L.* (1993) 21 Cal.App.4th 1057, 1067; see *In re M.M.*

(2015) 235 Cal.App.4th 54, 64 [applying the abuse of discretion standard to the juvenile court's order changing the child's placement at the § 366.26 hearing].) We will not disturb the court's determination "'"unless the trial court has exceeded the limits of legal discretion by making an arbitrary, capricious, or patently absurd determination."'" (*Stephanie M.*, *supra*, 7 Cal.4th at p. 318.)

Here, Mother fails to show the court abused its discretion. She contends "either [DPSS] approved the maternal grandparents for placement and did not inform the court, or [DPSS] did not follow through with the assessment." She further asserts that the placement issue was not addressed by the juvenile court and that the court "also had a responsibility to address the placement issue under section 361.3." The record does not support Mother's contentions. The record shows instead that DPSS was unable to complete the assessment because the maternal grandmother failed to fully participate and submit the necessary assessment application.

The maternal grandmother requested placement of the children in May 2017. At that time, she indicated that both she and her husband had a criminal history that may not allow them to be approved for the children's placement. The maternal grandmother also had a history of substance abuse. There is no evidence in the record that DPSS either approved or denied the maternal grandparents for placement. While Mother believed that the maternal grandmother had been approved for placement, there is no evidence in the record to support this belief. DPSS wanted the maternal grandmother to complete the placement approval application in order to proceed with the relative assessment. When

the juvenile court authorized visits with the maternal grandparents on December 18, 2017, the maternal grandmother had not completed a background check. As such, visits between the children and the maternal grandmother did not occur. DPSS reported that the maternal grandmother "is currently undergoing the Resource Family Approval Process so that she may be considered for placement of the children."

The record shows that DPSS made a good faith assessment of the maternal grandparents, but were prevented by the maternal grandparents' failure to cooperate and submit necessary documentation in order to be considered for placement. While the maternal grandparents were entitled to preferential placement consideration, this does not entitle them to automatic approval of placement or lessen their responsibility to submit necessary paperwork to allow DPSS to properly assess them. (*In re Andrea G.* (1990) 221 Cal.App.3d 547, 556.) On this record, we cannot find that DPSS failed to proceed in good faith. There was no showing that DPSS was responsible for the maternal grandparents' delay or failure in submitting the necessary approval paperwork. DPSS began assessing the nonrelative prospective adoptive parents for permanency after the maternal grandparents' assessment had been pending for over a year. Further, eight months had passed since the court terminated Mother's reunification services and set the matter for a permanency planning hearing. Mother's reunification services were terminated on January 18, 2018, and the section 366.26 hearing was held on September 18, 2018. Given the length of time that had passed, and the children's need

for permanence, we do not see DPSS's simultaneous assessment of the prospective adoptive parents as a sign of bad faith requiring reversal.

Mother relies on *In re R.T.* (2015) 232 Cal.App.4th 1284 (*R.T.*), in which the court concluded the "relative's home was never given good faith consideration." (*Id*. at p. 1297.) This case, however, is readily distinguishable from *R.T.* There, the social services agency removed R.T. from his parents' home and placed him with nonrelatives. (*Id.* at p. 1292.) That same day or shortly thereafter, the father identified two paternal aunts to assess for potential placement. (*Id*. at p. 1293.) Although the agency initiated home safety inspections, it told the paternal aunts it wanted to keep R.T. in his current placement. (*Ibid*.) The agency completed the paternal aunts' home studies two months after the jurisdictional and dispositional hearing. (*Ibid*.) Still, the agency refused to consider moving R.T., and there was "no indication in the record that the agency ever evaluated the relatives for placement under the relevant statutory criteria. (§ 361.3, subd. (a).)" (*Ibid*.) Before the permanency planning hearing, one paternal aunt and her husband filed a petition seeking placement of R.T. (*Id*. at pp. 1293-1294.) At a hearing on the petition, R.T.'s caseworker testified the agency "never considered the paternal aunts for placement," and the "'plan from day one has only been to consider adoption of this child'" by the nonrelative caregivers. (*Id*. at pp. 1294, 1297.) The caseworker's supervisor testified "relative placements do not receive preference." (*Id.* at p. 1294.) The juvenile court ultimately denied the paternal aunt's petition and later placed R.T. for adoption. (*Id*. at pp. 1294-1295.) On these facts, the appellate court found the agency

had not considered the relatives for R.T.'s placement in good faith. (*Id*. at p. 1297.) The agency had assessed their homes for safety without any intention of fully assessing whether placement was appropriate under the factors set forth in section 361.3. (*Id.* at pp. 1297, 1299.) "The agency simply decided, without reference to or consideration of statutory standards, that R.T. was in a good placement and would not move him." (*Id*. at p. 1299.)

Preferential consideration means relatives are the first to be investigated and considered. (§ 361.3, subd. (c)(1).) The agency in *R.T.* violated this mandate by failing to actually consider the paternal aunts. This case, in contrast, lacks evidence of an open disregard for the relative placement preference of section 361.3. There are no explicit statements from the social workers that DPSS never intended to evaluate the maternal grandparents for placement. No social worker expressed the erroneous belief that relatives do not receive preferential consideration. DPSS and the court did not completely ignore the factors set forth in section 361.3. To the contrary, DPSS wanted to await the completion of the maternal grandparents' assessment before placing the children in their home. Consequently, *R.T.* does not compel us to find a lack of good faith consideration here.

The relative placement preference is not a relative placement *guarantee*. (§ 361.3, subd. (a); *Sarah S.*, *supra*, 43 Cal.App.4th at p. 282.) The record contains ample evidence that the relative placement preference was overridden in this case. Thus, under the circumstances of this case, even if we assume, for the sake of argument that DPSS

and the court failed to timely assess the maternal grandparents for placement, the failure was harmless error. (See *In re Joseph T.* (2008) 163 Cal.App.4th 787, 798 [failure to make required findings under section 361.3 was harmless because it was "not reasonably probable such findings, if made, would have been in favor of appellant"].)

"Before any judgment can be reversed for ordinary error, it must appear that the error complained of 'has resulted in a miscarriage of justice.' [Citation.] Reversal is justified 'only when the court, "after an examination of the entire cause, including the evidence," is of the "opinion" that it is reasonably probable that a result more favorable to the appealing party would have been reached in the absence of the error.'" (*In re Cristian I.* (2014) 224 Cal.App.4th 1088, 1098-1099; see *In re Abram L.* (2013) 219 Cal.App.4th 452, 463; *In re J.S.* (2011) 196 Cal.App.4th 1069, 1078.)

Here, the record shows compelling reasons it would not have been in the children's best interest to place them with their maternal grandparents regardless of the maternal grandparents' qualifications. First, during the reunification period the first priority is family reunification. In this case the best chance of reunification was with the children's mother. Placing the children with the maternal grandparents in Fresno would have frustrated that goal by separating the children from their mother who lived in Riverside County. Sed, regarding P.K., Mother did not request P.K. to be placed with the maternal grandmother at the May 18, 2018 hearing because she was doing "so well in her current placement." At that same hearing, P.K. requested that her sister N.K. be placed with her. DPSS had expressed its goal of maintaining the sibling bond. Although P.K.

had been abusive to N.K. in the children's prior foster home, the juvenile court could reasonably infer there was a sibling bond between P.K. and N.K. P.K., who was 12 years older than N.K., had cared for N.K. in Mother's absence. In addition, DPSS's reports indicate N.K. was affectionate with P.K. Placing N.K. with the maternal grandparents would have resulted in separating the sisters in different homes. Because P.K. and N.K. were bonded to each other, separating them was not in their best interest. Moreover, there was no evidence that the maternal grandparents had a bond with P.K. or N.K. or that they had established and maintained a relationship with the children. Additionally, P.K., who was 14 years old at the time of the section 366.26 hearing, did not state that she wanted to live with the maternal grandparents or even whether she wanted to visit them. Rather, P.K. clearly stated that she wished to be adopted by her prospective adoptive parents, where she had been living in a thriving environment.

In sum, Mother has not shown the court's decision resulted in a miscarriage of justice because Mother has not shown it was in the children's best interest to place them in the maternal grandparents' home.

B. *Adoptability Finding*

Mother also asserts that the juvenile court erred in finding by clear and convincing evidence the children were likely to be adopted within a reasonable time. Specifically, Mother argues that because of P.K.'s history of negative behavior that caused her to be moved from earlier an placement, and because P.K. and N.K. had been in their current

placement for only a relatively short period, the evidence does not support a finding that P.K. and N.K. are likely to be adopted. As we will explain, we disagree.

The juvenile court may terminate parental rights if it determines by clear and convincing evidence the minor is likely to be adopted within a reasonable time. (§ 366.26, subd. (c)(1); *In re Zeth S.* (2003) 31 Cal.4th 396, 406; *In re B.D.* (2008) 159 Cal.App.4th 1218, 1231.) "'The issue of adoptability . . . focuses on the minor, e.g., whether the minor's age, physical condition, and emotional state make it difficult to find a person willing to adopt the minor.'" (*Zeth S.*, at p. 406.) "On review, we determine whether the record contains substantial evidence from which the court could find clear and convincing evidence that the child was likely to be adopted within a reasonable time. . . . We give the court's adoptability finding the benefit of every reasonable inference and resolve any evidentiary conflicts in favor of the judgment of the trial court." (*B.D.*, at p. 1232.)

DPSS's reports provide ample evidence to support a finding that P.K. and N.K. are likely to be adopted despite P.K.'s prior behavioral issues. Most importantly, both children were together in a stable placement with a family who wanted to adopt them. "[T]he fact that a prospective adoptive parent has expressed interest in adopting the minor is evidence that the minor's age, physical condition, mental state, and other matters relating to the child are not likely to dissuade individuals from adopting the minor. In other words, a prospective adoptive parent's willingness to adopt generally indicates the minor is likely to be adopted within a reasonable time either by the prospective adoptive

parent or by some other family." (*In re Sarah M.* (1994) 22 Cal.App.4th 1642, 1649-1650, italics omitted.) Significantly too, DPSS reported that after being placed in her current placement, P.K. was no longer taking medication and she was thriving emotionally, developmentally, mentally, and educationally. P.K. was described as being happy and comfortable in the home. In addition, P.K. was receiving straight A's in school and had an opportunity to travel to Europe in June 2019, due to her academic achievements. Although P.K. had behavioral issues while in her prior placement, she did not have aggressive behavior in her prospective adoptive home. Moreover, P.K. and her caregivers were mutually bonded and her caregivers wanted to adopt P.K. (See *In re Michael G.* (2012) 203 Cal.App.4th 580, 592-593 [child's aggressive and defiant behaviors did not require a finding he was unadoptable as those behaviors significantly diminished while he was in the care of a stable, nurturing, and attentive caregiver, permitting the reasonable inference that an equally dedicated adoptive parent could manage the child's behaviors].)

Similarly, the current caregivers desired to adopt N.K. and provide both girls with a stable, loving, and permanent home. N.K. was described as a friendly, happy two-year-old who got along well with everyone. N.K. was healthy and developmentally on target. Further, N.K.'s prior caregiver also expressed a desire to adopt her. Therefore, substantial evidence shows that N.K. would likely be adopted within a reasonable time.

Mother contends that the evidence must show more than that the identified adoptive parents were interested in adopting P.K. and N.K. Citing *In re Amelia S.* (1991) 229 Cal.App.3d 1060 (*Amelia S.*), Mother argues that "[t]here was no evidence any other family would adopt the children within a reasonable time if the current placement did not work out, like the prior placement." The present case, however, stands in stark contrast to *Amelia S.*, in which there were 10 dependent children, all with developmental, emotional, and physical problems. (*Id*. at pp. 1062-1063.) The children were described as "'hard to place.'" (*Id*. at p. 1063.) None of the foster parents had agreed to adopt them, although the foster parents of five of the children were "*considering* adoption." (*Id*. at pp. 1062, 1065.) The remaining foster parents expressed no interest in adopting the remaining children. (*Id*. at pp. 1062-1063.) The appellate court concluded that "[t]his is a far cry, however, from the clear and convincing evidence required to establish the *likelihood* of adoption," and that the juvenile court erred in finding that the children were adoptable and in terminating parental rights. (*Id*. at p. 1065.)

Here, there is no evidence that anyone has ever identified P.K. and N.K. as hard to place children. To the contrary, according to DPSS's reports, based on the children's characteristics, N.K.'s former and current caregivers both wanted to adopt her, while P.K.'s current caregivers repeatedly stated their desire to adopt P.K. Moreover, the identified adoptive parents were not just considering adoption. They demonstrated their commitment to adoption as shown by their efforts to develop relationships with P.K. and N.K. and providing for their developmental, educational, and emotional needs. Their

willingness to adopt P.K. and N.K. distinguishes this case from *Amelia S.*, in which no such evidence existed.

Mother also criticizes the length of time the children had been in the prospective adoptive home and suggests the length of time is too short. However, it is not necessary that a prospective adoptive home be identified before a child may be found adoptable. (*In re I.I.* (2008) 168 Cal.App.4th 857, 870.) For a child who is generally adoptable, "neither a child's placement in a potential adoptive home nor the availability of prospective adoptive parents 'waiting in the wings' is a prerequisite to finding adoptability. [Citation.]" (*In re L.Y.L.* (2002) 101 Cal.App.4th 942, 956.) Thus, even if the current caregivers were eventually unable to adopt the children, P.K. and N.K. were both considered generally adoptable due to their developmental and physical characteristics, personalities, good general health, and intelligence, and N.K. had the added benefit of her young age.

Based on the foregoing, we find substantial evidence supports the juvenile court's adoptability finding that both P.K. and N.K. were likely to be adopted.

IV

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

CODRINGTON
J.

We concur:

MILLER
Acting P. J.

SLOUGH
J.